

**LOCAL OPERATING PROCEDURES
UNITED STATES IMMIGRATION COURT
BUFFALO, NEW YORK**

PROCEDURE 1. Pre-Hearing Motions Practice.

- A. In addition to complying with 8 C.F.R. § 3.23, all written pre-hearing motions shall be accompanied by a proposed order in triplicate for signature by the Immigration Judge. Proposed orders must conform to the format contained in Appendix F. All written pre-hearing motions will be decided on the basis of the written record unless the Immigration Judge determines that oral argument is necessary.
- B. A written motion under this procedure or under 8 C.F.R. § 3.23 must be responded to by the opposing party within ten (10) days of being served in person, or within thirteen (13) days if served by mail, by filing the response with the Immigration Court in Buffalo, New York. Upon order of the court, for good cause shown, a different time may be set for responses to prehearing motions. **PREHEARING MOTIONS NOT RESPONDED TO WILL BE DEEMED UNOPPOSED (8 C.F.R. §§ 3.23(a)).**
- C. Pursuant to 8 C.F.R. § 3.32(a), the parties must use a certificate of service that conforms to the format in Appendix E. When correspondence is received by the court from attorneys but without a certificate of service, the court routinely returns it to the attorney with a form letter noting the deficiency. When correspondence is received by a pro se alien, the court will provide a copy to the INS.
- D. Motion to Withdraw/Substitute Representation.
 - 1. Motions for withdrawal of representation shall be in writing to the assigned Immigration Judge setting forth:
 - a. The reason(s) for the withdrawal;
 - b. That a good faith effort was made to locate alternate representation with a recitation of the specific efforts made, or that the New York State Bar Association and Bar Association of Erie County telephone numbers were provided to the client;
 - c. That the client was notified of the date, time, and place of any scheduled hearing(s) before the Immigration Judge; of the necessity of appearing at such hearing; and of the consequences of failure to appear.
 - 2. Such motion must be filed no later than thirty (30) days prior to the next Individual

Calendar hearing date. No time limitation applies to Master Calendar hearings. Motions not timely filed will only be granted by the Immigration Judge for good cause shown.

3. Substituted counsel or representative shall forthwith file with the Immigration Court a properly completed Form EOIR-28, Notice of Entry of Appearance.

E. Motions for Change of Venue.

In addition to complying with 8 C.F.R. §§ 3.20 and 32(a), all written motions for change of venue shall contain the respondent's plea to the allegations and charge(s) contained in the charging document; a designation of a country in the event of deportation or a refusal to designate such a country; the relief from deportation or exclusion, if any, to be sought by the respondent or applicant; the date and time of the scheduled hearing before the Immigration Judge; and the name of the Immigration Judge if any hearings have occurred prior to the filing of the motion to change venue.

PROCEDURE 2. Continuances.

Parties seeking a continuance of any scheduled hearing before an Immigration Judge shall file a written motion for continuance no less than fifteen (15) calendar days prior to the scheduled hearing. The motion shall set forth the reason(s) that the continuance is requested. Unless notified by the Immigration Judge that the motion for continuance has been granted, all parties must attend the hearing and be prepared to proceed. Motions for continuance within the fifteen (15) day period prior to the hearing will be considered only in the discretion of the Immigration Judge for good cause shown.

PROCEDURE 3. Trial Preparation.

A. At the Master Calendar hearing, the parties shall be prepared as follows:

1. Respondent/Applicant shall be prepared to respond to the allegations contained in the charging document.
2. Respondent/Applicant shall be prepared to indicate all applications sought for relief from deportation or exclusion.
3. Respondent/Applicant shall submit motions for subpoenas pursuant to Procedure 1 and in accordance with 8 C.F.R. § 287.4.
4. Both parties shall be prepared to state (in hours) the estimated time needed to present the case and request, if needed, the presence of an interpreter at the Individual Calendar hearing.
5. The Immigration and Naturalization Service (INS) shall be prepared to state its

position on all issues and applications for relief.

6. Time of Arrival. At present, all cases called for a Master Calendar are set for either 9:00 or 11:00 a.m. All aliens/attorneys must timely appear at the court and signify their presence by signing in at the reception window. If counsel wishes to have his appearance waived, in addition to the alien's, he may indicate such on any proposed order submitted to the court. As a matter of courtesy, if attorneys appear at court and personally sign in prior to the time set for their hearing, their cases will be called first in the order of counsel appearance. Attorneys arriving later than the time of the scheduled hearing will be called in the normal order of arrival as reflected by the sign-in sheet.

B. In lieu of a personal appearance at the Master Calendar hearing, appearance may be entered as follows:

1. A written pleading by counsel for the respondent/applicant may be filed with the Immigration Court. The written pleading must be in compliance with the written pleading format at Appendix A or B and must be coupled with a Motion to Waive Presence at the Master Calendar hearing, pursuant to 8 C.F.R. § 3.25. The pleading and the Motion to Waive Presence must be filed no less than ten (10) calendar days prior to the scheduled Master Calendar hearing. The motion must be accompanied by a proposed order in compliance with the order format approved by this Court. **UNLESS SUCH ORDER IS SIGNED BY THE IMMIGRATION JUDGE, THE RESPONDENT/APPLICANT'S PRESENCE IS NOT EXCUSED.**

Additional matters may be set forth in the written pleading, supplementing the written pleading format, in the discretion of the party submitting the pleading.

See Appendix of the Local Operating Procedures for the approved formats for the written pleadings, the waiver of presence at the Master Calendar hearing, and the proposed order.

2. A telephonic hearing request may be made in lieu of a personal appearance. Such requests must be filed no less than ten (10) calendar days prior to the scheduled Master Calendar hearing, and must be coupled with a Motion to Waive Presence at the Master Calendar hearing, pursuant to 8 C.F.R. § 3.25. The motion must be accompanied by a proposed order in compliance with the order format approved by this Court. **UNLESS SUCH ORDER IS SIGNED BY THE IMMIGRATION JUDGE, THE RESPONDENT/APPLICANT'S PRESENCE IS NOT EXCUSED.**

C. At the Individual Calendar hearing, both parties shall be prepared to present all remaining testimony and evidence on all issues, including rebuttal.

PROCEDURE 4. General.

All matters shall proceed at the time and date scheduled for hearing. Parties shall be prepared to go forward with their cases at that time.

PROCEDURE 5. Filing Procedure.

- A. In addition to complying with 8 C.F.R. § 3.32, all documents and applications submitted for consideration by an Immigration Judge shall be two-hole punched at the top of the page with holes 2 3/4 inches apart. All exhibits and documents in support of a motion or claim shall be paginated and shall have as a first page a table of contents with page number identification. The use of exhibit tabs with letter designations is required for multiple documents. Papers not properly complying shall be returned.
- B. In addition to complying with 8 C.F.R. §§ 3.31 and 3.32, all proposed exhibits and briefs must be filed with the Immigration Court no later than fifteen (15) calendar days prior to the scheduled Individual Calendar hearing, unless otherwise authorized or directed by the Immigration Judge. The court may refuse to accept late-filed documents by any party.
- C. Furthermore, attorneys shall name all proposed witnesses they intend to bring to court and provide a brief offering as to each witness' testimony. All proposed witness lists, along with the offer, must be filed with the Immigration Court no later than fifteen (15) days prior to the scheduled Individual Calendar hearing, unless otherwise directed by the Immigration Judge, or where good cause is shown. Failure to comply with this procedure may result in the court rejecting the witnesses and also the documents, returning them to the originating party.

PROCEDURE 6. Pre-Trial Memorandum.

Pursuant to 8 C.F.R. §§ 3.21 and 3.31, at the judge's discretion, parties may be required to provide a pre-trial memorandum.

APPENDIX TO LOCAL OPERATING PROCEDURES

TABLE OF CONTENTS

- (A) Written Pleading in Deportation Proceedings.
- (B) Written Pleading in Exclusion Proceedings.
- (C) Motion to Waive Presence at Master Calendar hearing.
- (D) Order Waiving Appearance, Setting Due Date for Applications, and Setting Trial Date.
- (E) Certificate of Service.
- (F) Proposed Order Format.

Note: The formats provided in these appendices should be adapted as appropriate to suit the particular circumstances of the proceeding.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BUFFALO, NEW YORK**

In the Matter of _____) File No: _____
)
) In Exclusion Proceedings
Applicant _____)
_____)

WRITTEN PLEADING

1. Applicant, through counsel, concedes proper service of the Notice to Applicant for Admission Detained for Hearing Before Immigration Judge (Form I-122), dated _____.
2. Attorney for the applicant has explained the rights set forth in 8 C.F.R. § 236.2(a).
3. Applicant concedes the following allegation(s) _____,
and denies the following allegation(s) _____.
4. Applicant concedes the following charge(s) of excludability _____,
_____ , and denies the following charges of excludability _____.
5. As relief from exclusion, applicant will be filing an application for _____
_____. The application(s) shall be filed with the Court within
thirty (30) days of the date of this written pleading. Applicant acknowledges that if the
application(s) are not timely filed, the application(s) shall be deemed waived under 8 C.F.R.
§ 3.31(c).
6. Counsel for the applicant estimates that _____ hour(s) shall be required to present the case.
7. It is requested that a _____ interpreter be provided.

Date Attorney/Representative for Applicant

I, _____, attest to my full knowledge and understanding of
my rights set forth in 8 C.F.R. § 236.2. I waive a further explanation of such rights by this Court.

Date Applicant

APPENDIX B

In the Matter of _____)
)
)
 Respondent)
 _____)

File No: _____

In Deportation Proceedings

1. Respondent, through counsel, concedes proper service of the Order to Show Cause, dated _____.
2. Attorney for the respondent has explained the rights set forth in 8 C.F.R. § 242.16(a) and the consequences of failing to appear in court as set forth in the Immigration and Nationality Act § 242B.
3. Respondent concedes the following allegation(s) _____, and denies the following allegation(s) _____.
4. Respondent concedes the following charge(s) of deportability _____, and denies the following charges of excludability _____.
5. In the event of deportation, respondent names _____ as the country to which deportation should be directed.
6. As relief from deportation, respondent will be filing an application for _____. The application(s) shall be filed with the Court within thirty (30) days of the date of this written pleading. Respondent acknowledges that if the application(s) are not timely filed, the application(s) shall be deemed waived under 8 C.F.R. § 3.31(c).
7. Counsel for the respondent estimates that _____ hour(s) shall be required to present the case.
8. It is requested that a _____ interpreter be provided.

Attorney/Representative for Respondent

Finally, I understand that in accordance with 8 C.F.R. § 3.15(c), if my address changes I must notify the Court within 5 days of such change by filling out and mailing the EOIR-33 form.

Respondent

APPENDIX A

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BUFFALO, NEW YORK**

In the Matter of)
)
)
Respondent/Applicant)
_____)

File No: _____

In Deportation/Exclusion Proceedings

Motion To Waive Appearance at Master Calendar Hearing

Upon completing and timely submitting the Written Pleading Statement, consistent with the Written Pleading format for this Court, the respondent/applicant, through counsel, requests a waiver of his/her appearance at the Master Calendar hearing scheduled for _____.

DATE

Attorney/Representative for respondent/applicant

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BUFFALO, NEW YORK**

In the Matter of)
)
)
Respondent/Applicant)
_____)

File No: _____

In Deportation/Exclusion Proceedings

ON BEHALF OF INS

ON BEHALF OF RESPONDENT/APPLICANT

ORDER

Upon receipt of Motion to Waive Appearance and the Written Pleading consistent with Local Operating Procedure 3, the respondent/applicant's Motion to Waive Appearance at Master Calendar Hearing is granted. The application(s) for relief must be filed by _____. Failure to file the application for relief by this date will be deemed an abandonment of such application, unless good cause is shown. An order of exclusion or deportation may then be entered.

The hearing is set for the _____ day of _____, 199____
at _____ a.m./p.m., at _____.

DONE AND ORDERED this _____ day of _____, 19____, at
Buffalo, New York.

Immigration Judge

CERTIFICATE OF SERVICE

CASE NAME _____

CASE NO. _____

I HEREBY CERTIFY that on this _____ day of _____, 199____, I
caused

to be served the: (Describe the documents being served) _____
-

(check) by placing a true copy thereof enclosed in a sealed envelope, with postage thereon
fully prepaid and depositing the same with the United States Postal Service to the
person at the address set forth below.

_____ by causing to be personally delivered a true copy thereof to the person at the address
set forth below.

_____ by (Specify, e.g. Federal Express, United Parcel Service, etc.) to the person at the
address set forth below.

_____ by certified mail, return receipt requested to the person at the address set forth below.

ADDRESS OF THE PERSON BEING SERVED

I declare under penalty of perjury that the foregoing is true and correct. Executed on
_____, 199____.

Signature

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BUFFALO, NEW YORK**

In the Matter of)
)
)
Respondent/Applicant)
_____)

File No: _____

In Deportation/Exclusion Proceedings

ON BEHALF OF INS

ON BEHALF OF RESPONDENT/APPLICANT

ORDER

(INSERT BODY OF THE PROPOSED ORDER)

DONE AND ORDERED this _____ day of _____, 199____, at
Buffalo, New York.

Immigration Judge

APPENDIX F